

HOUSE BILL REPORT

2SHB 1028

As Passed Legislature

Title: An act relating to supporting crime victims and witnesses by promoting victim-centered, trauma-informed responses in the legal system.

Brief Description: Supporting crime victims and witnesses by promoting victim-centered, trauma-informed responses in the legal system.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Orwall, Mosbrucker, Ryu, Simmons, Goodman, Reed, Lekanoff, Pollet, Callan, Doglio, Macri, Caldier, Reeves, Wylie, Gregerson, Davis, Ormsby and Fosse).

Brief History:

Committee Activity:

Community Safety, Justice, & Reentry: 1/9/23, 1/19/23 [DPS];
Appropriations: 2/6/23, 2/22/23 [DP2S(w/o sub CSJR)].

Floor Activity:

Passed House: 3/6/23, 95-0.
Senate Amended.
Passed Senate: 4/11/23, 49-0.
House Concurred.
Passed House: 4/13/23, 97-0.
Passed Legislature.

Brief Summary of Second Substitute Bill

- Reestablishes the Sexual Assault Forensic Examination Best Practices Advisory Group.
- Provides that a medical disclosure authorization to a health care provider or facility regarding a forensic examination remains valid until the end of all related criminal proceedings, subject to certain exceptions.
- Extends the statute of limitations that applies to the prosecution of sex offenses where the suspect is identified by DNA testing or photograph.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

- Modifies the curriculum and requirements for certain training programs offered by the Criminal Justice Training Commission (CJTC).
- Requires the CJTC to administer a program to establish a statewide resource prosecutor for sexual assault cases, and to develop and conduct specialized training for persons responsible for prosecuting sexual assault cases involving adult victims.
- Expands the statutory rights of crime victims, survivors, and witnesses to apply to any adult or juvenile criminal proceeding, and any sexually violent predator commitment proceeding.
- Modifies requirements and procedures for the collection of biological samples from persons required to provide such samples.
- Provides that evidence of a victim's social media account depicting past sexual behavior is inadmissible in a prosecution for a sex offense for the purpose of proving the victim's consent or attacking the victim's credibility, subject to certain exceptions.

HOUSE COMMITTEE ON COMMUNITY SAFETY, JUSTICE, & REENTRY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Goodman, Chair; Simmons, Vice Chair; Mosbrucker, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Davis, Farivar, Fosse, Graham and Ramos.

Staff: Corey Patton (786-7388).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Community Safety, Justice, & Reentry. Signed by 18 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Berg, Chopp, Davis, Fitzgibbon, Lekanoff, Pollet, Riccelli, Ryu, Senn, Simmons, Slatter, Springer, Stonier and Tharinger.

Minority Report: Without recommendation. Signed by 11 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Chandler, Connors, Couture, Dye, Harris, Rude, Sandlin and Steele.

Staff: Yvonne Walker (786-7841).

Background:

Sexual Assault Forensic Examination Best Practices Advisory Group.

A person who has been the victim of a sexual assault may undergo a forensic examination for the purpose of collecting evidence left behind during the assault. The doctor or nurse conducting the examination preserves the evidence using a sexual assault kit (SAK). In some cases, testing conducted on a SAK may result in a DNA (deoxyribonucleic acid) profile of a potential suspect. The profile is uploaded into the Combined DNA Indexing System (CODIS) where it may match profiles collected from other investigations or from arrested or convicted persons. A match, or "CODIS hit," may function as an investigative lead for the assault.

In 2019 the state established the Sexual Assault Forensic Examination Best Practices Advisory Group (SAFE Advisory Group) within the Attorney General's Office and directed the SAFE Advisory Group to reduce the number of untested SAKs and review best practice models for managing all aspects of sexual assault investigations. The SAFE Advisory Group expired on December 31, 2021.

Uniform Health Care Information Act.

The state Uniform Health Care Information Act (UHCIA) governs the disclosure of health care information by health care providers and their agents or employees. The UHCIA provides that a health care provider may not disclose health care information about a patient unless there is a statutory exception or written authorization by the patient. To be valid, a disclosure authorization to a health care provider or health care facility must:

- be in writing, dated, and signed by the patient;
- identify the nature of the information to be disclosed;
- identify the name and institutional affiliation of the person to whom the information will be disclosed;
- identify the provider making the disclosure;
- identify the patient; and
- contain an expiration date or an expiration event that relates to the patient or the purpose of the disclosure.

Statute of Limitations for Sex Offenses.

A statute of limitations provides an authorized period of time for initiating a prosecution after a crime is committed. Once the applicable statute of limitations has expired, a prosecutor is barred from bringing charges against the alleged perpetrator. Statutes of limitations vary depending on the crime.

In a prosecution for a sex offense, the applicable statute of limitation runs from whichever of the following dates is later:

- the date the crime was committed; or
- two years from the date the identity of the suspect is conclusively established by DNA testing or by photograph.

Criminal Justice Training Commission.

The Criminal Justice Training Commission (CJTC) provides basic law enforcement training for new recruits prior to certification as well as advanced training and educational programming for officers, including the following:

- training for officers who do not regularly investigate sexual assault cases on a victim-centered, trauma-informed approach to interacting with sexual assault victims; and
- specialized training for officers who are responsible for investigating sexual assault cases involving adult victims, which applicable officers must complete within one year of being assigned.

The CJTC must conduct an annual, ongoing case review program to review case files from select law enforcement agencies and prosecuting attorneys in order to identify changes to training and investigatory practices necessary to optimize outcomes in sexual assault investigations and prosecutions involving adult victims. If a law enforcement agency has not participated in the CJTC's specialized training for officers who are responsible for investigating sexual assault cases involving adult victims by July 1, 2022, the CJTC may prioritize the agency for selection to participate in the case review program.

Rights of Crime Victims, Survivors of Victims, and Witnesses.

The Washington Constitution grants crime victims basic and fundamental rights, and additional rights are enumerated in statute. A reasonable effort must be made to ensure that victims, survivors of victims, and witnesses of crimes have various rights in criminal court and juvenile court proceedings. Examples of statutory rights include the following:

- with respect to victims of violent and sex crimes, the right to have a crime victim advocate from a crime victim or witness program, or any other support person of the victim's choosing, present at any prosecutorial or defense interviews with the victim, and at any judicial proceedings related to criminal acts committed against the victim;
- with respect to victims and survivors of victims, the right to be physically present in court during trial, or if subpoenaed to testify, to be scheduled as early as practical in the proceedings in order to be physically present during trial after testifying and not to be excluded solely because they have testified; and
- with respect to victims and survivors of victims, to be informed by the prosecuting attorney of the date, time, and place of the trial and of the sentencing hearing for felony convictions upon request by a victim or survivor.

Collection of Biological Samples.

State law requires the collection of biological samples from certain convicted offenders for the purpose of entering a DNA profile into CODIS. A sample must be collected from any person who is required to register as a sex offender or kidnapping offender, convicted of a felony offense, or convicted of one of the following misdemeanor or gross misdemeanor offenses:

- Assault in the fourth degree where domestic violence was pleaded and proven;
- Assault in the fourth degree with sexual motivation;

- Communication with a Minor for Immoral Purposes;
- Custodial Sexual Misconduct in the second degree;
- Failure to Register;
- Harassment;
- Patronizing a Prostitute;
- Sexual Misconduct with a Minor in the second degree;
- Stalking;
- Indecent Exposure; and
- Violation of a Sexual Assault Protection Order.

County and city jails are responsible for collecting samples from persons incarcerated in their facilities, and the Department of Corrections and the Department of Children, Youth, and Families are responsible for collecting samples from persons incarcerated in state facilities. Local police departments and sheriff's offices are responsible for collecting samples from registered sex offenders, registered kidnapping offenders, and convicted persons who do not serve any term of confinement.

A person who willfully refuses to comply with a legal request for a DNA sample is guilty of a gross misdemeanor.

Evidence of a Victim's Past Sexual History.

In a prosecution for a sex offense, evidence of a victim's past sexual behavior is generally inadmissible to prove the victim's consent or attack the victim's credibility. However, when the perpetrator and victim engaged in sexual intercourse with each other in the past, and when the behavior is material to the issue of consent, evidence concerning the past behavior between the perpetrator and the victim may be admissible on the issue of consent. In a prosecution for Rape, Trafficking, or an offense related to Commercial Sexual Abuse of a Minor, such evidence is inadmissible to attack the credibility of the victim but is admissible on the issue of consent if certain procedures are followed, except when prohibited in the underlying criminal offense.

Summary of Second Substitute Bill:

Sexual Assault Forensic Examination Best Practices Advisory Group.

The Sexual Assault Forensic Examination Best Practices Advisory Group (SAFE Advisory Group) is reestablished in the Attorney General's Office. The membership is expanded by an additional six persons with certain specified roles or expertise. The duties of the SAFE Advisory Group are modified, including by removing issues relating to the testing and storage of untested or unreported SAKs. The SAFE Advisory Group must research and make recommendations on opportunities to increase access to and availability of critical sexual assault nurse examiner services, and to continue monitoring the testing of SAKs and the supply chain and distribution of SAKs. The SAFE Advisory Group expires on July 1, 2026.

Uniform Health Care Information Act.

A disclosure authorization to a health care provider or health care facility authorizing disclosure of information to law enforcement regarding a forensic examination performed for the purposes of gathering evidence for possible prosecution of a criminal offense is valid until the end of all related criminal proceedings or a later event selected by the provider, facility, patient, or patient's representative, unless the patient or patient's representative requests a different expiration date or event.

Statute of Limitations for Sex Offenses.

The authorized period for commencing the prosecution of certain sex offenses is expanded. In a prosecution for a sex offense, the applicable statute of limitations runs from whichever of the following dates is later:

- the date the crime was committed; or
- four years from the date the identity of the suspect is conclusively established by DNA (deoxyribonucleic acid) testing or by photograph.

Criminal Justice Training Commission.

The Criminal Justice Training Commission's (CJTC) trauma-informed training for officers who do not regularly investigate sexual assault cases is expanded to include training on all gender-based violence. All peace officers must complete the trauma-informed training every three years. The CJTC's specialized training for officers investigating sexual assault cases involving adult victims is expanded to include training for investigators of gender-based violence cases, commanding officers overseeing investigations of sexual assault and gender-based violence, and prosecutors responsible for prosecuting sexual assault cases involving adult victims. The CJTC's case review program is modified to specify that:

- the CJTC may prioritize case reviews for agencies that did not participate in required specialized training in the previous two years; and
- the program must include a comparison of cases involving prosecutors who have participated in the CJTC's specialized training to cases involving prosecutors who have not participated in such training.

The CJTC must, subject to appropriation, administer a grant program for establishing a statewide resource prosecutor for sexual assault cases. The grant recipient must be a statewide organization or association representing prosecuting attorneys. The grant recipient must hire a resource prosecutor for specified purposes. The CJTC may, in consultation with the SAFE Advisory Group, establish additional conditions for any grant awarded. The CJTC and statewide resource prosecutor must, subject to appropriation, partner to develop and conduct specialized, intensive, and integrative training meeting specified criteria for persons responsible for prosecuting sexual assault cases involving adult victims.

Rights of Crime Victims, Survivors of Victims, and Witnesses.

The statutory rights of crime victims, survivors, and witnesses are specified to apply to any adult or juvenile criminal proceeding and any sexually violent predator commitment

proceeding. If a victim, survivor of a victim, or witness of a crime is denied a right, that person may seek an order directing compliance by the relevant party. Compliance with the right is the sole available remedy.

Collection of Biological Samples.

The circumstances when a biological sample must be collected for the purpose of entering a DNA profile into the Combined DNA Indexing System are expanded to include when a juvenile is adjudicated of an offense which would be a felony if committed by an adult.

County and city jails, the Department of Corrections, and the Department of Children, Youth, and Families are responsible for collecting samples from persons required to provide a sample who are incarcerated in their facilities. If the sample is not collected prior to the person's release from confinement, the responsible facility must notify the sentencing court within three business days of the person's release that it has released the person without collecting the sample. The court must schedule a compliance hearing within 10 days of receiving a notice that a person owing a sample was released from confinement. The local police department or sheriff's office must serve the person owing the sample with notice of the compliance hearing and file proof of service with the court. A representative of the local police department or sheriff's office must attend the compliance hearing and obtain the person's sample. Attorneys' fees and court costs associated with scheduling and attending the compliance hearing must be paid for by the facility that failed to collect the sample at the time of the person's confinement.

The court must order a convicted person required to provide a sample, who will not serve a term of confinement, to be administratively booked at a city or county jail to provide the sample, in lieu of ordering the convicted person to report to a local police department or sheriff's office to provide the sample.

The court must create and implement a biological sample collection protocol and order the collection of samples at the time of sentencing. If the sample is not collected at the time of sentencing, then the sample must be collected by another applicable entity. The court must schedule a compliance hearing within 10 days of sentencing to ensure that the sample has been collected.

Evidence of a Victim's Past Sexual History.

In a prosecution for a sex offense, evidence of a victim's social media account, including any text, image, video, or picture, which depict sexual content, history, activity, communications, or nudity, is inadmissible on the issue of credibility and inadmissible to prove the victim's consent except when the perpetrator and victim engaged in sexual intercourse with each other in the past and the behavior is material to the issue of consent. In a prosecution for the crime of Rape, Trafficking, or an offense related to Commercial Sexual Abuse of a Minor, evidence of a victim's social media account depicting past sexual behavior is inadmissible to attack the credibility of the victim but is admissible on the issue of consent if certain procedures are followed, except when prohibited in the underlying

criminal offense.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains multiple effective dates. Please see the bill. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony (Community Safety, Justice, & Reentry):

(In support) Survivors of sexual assault who engage with the criminal justice system do so with the belief that someone will listen and act. Accountability is equally as important as the survivor's experience with the criminal justice system. Only a fraction of survivors make reports, but that should not be because they think they will be unsupported or ignored. Many survivors are from marginalized communities and lack resources, which is why they are targeted. Those survivors face profound barriers to justice.

Of the sexual assault kits (SAK) that have been tested and entered into the Combined DNA (deoxyribonucleic acid) Indexing System (CODIS), 35 to 40 percent will generate a CODIS hit. Over 98 percent are tested within the statutory time limit. However, less than 1 percent of sexual assaults result in felony charges. This bill provides tools to investigate and prosecute these sexual assault cases. There may be language proposed to prohibit at-home SAKs. This bill also contains language requiring an investigation to be conducted within 90 days, but many cases take longer than that. One suggestion is to require investigations to initiate or begin within 90 days instead.

Victims' rights are vital protections that may be overlooked because of expediency or other reasons. Currently there are no protections for victims' rights in judicial proceedings. Without these rights, victims have no recourse. This bill establishes the right to seek strict compliance. However, it may be impossible to provide remedies in certain instances, such as when a victim misses a chance to appear at a sentencing hearing. If the victim asked for strict compliance, that might force resentencing.

Case reviews have affirmed the effectiveness of training for officers. Lack of such training may limit the ability to respond in a way that mitigates harm and holds offenders accountable. This bill requires officers to receive specific training in gender-based violence, which is a critical expansion. This bill also provides grant funds for a sexual assault resource prosecutor, which is a model that has been used across the country. Partnering the resource prosecutor with the Criminal Justice Training Commission is an effective way to manage the new enhanced training for prosecutors. However, the scope of the case review for such training should be specified more clearly in the bill.

It is very difficult to stabilize someone and provide therapeutic services in 72 hours. Most

of the youth served at receiving centers are heavily addicted and have to come out of withdrawals. This bill provides 30 days to allow receiving centers to provide services, coordinate care, and develop a discharge plan.

(Opposed) None.

Staff Summary of Public Testimony (Appropriations):

(In support) The funding requested in the bill is critical and will benefit the receiving centers for sexually exploited youth. This is a very unique program with a specific population of youth that have been through unimaginable trauma and that are in need of more robust medical staff.

It is also recommended that funding is provided to: (1) expand the CJTC training content to include other forms of gender-based violence; and (2) mandate participation in the trauma-informed training for patrol officers and investigation commanders. Much of the money requested in the bill pertains to the development, management, and delivery of trauma-informed interviewing practices to prosecutors that mirror training provided for officers. Some of the funds will also support the expansion of the case review processes. To date, with its multidisciplinary team of experts, the CJTC has trained over 700 detectives and officers to conduct beneficial trauma-informed interviewing of victims. This bill will help close the gap of officers and prosecutors that have not been mutually trained about the impacts of trauma.

(Opposed) None.

Persons Testifying (Community Safety, Justice, & Reentry): Representative Tina Orwall, prime sponsor; Sarah Spier; Jennifer Wallace, Washington State Criminal Justice Training Commission; Jennifer Ritchie; Colleen McIngalls, King County Prosecuting Attorneys Office; Megan Allen, King County Sexual Assault Resource Center; and Russell Brown, Washington Association of Prosecuting Attorneys.

Persons Testifying (Appropriations): Jennifer Wallace, Washington State Criminal Justice Training Commission; and Sarah Spier.

Persons Signed In To Testify But Not Testifying (Community Safety, Justice, & Reentry): Michael Moran, Confederated Tribes of the Colville Reservation.

Persons Signed In To Testify But Not Testifying (Appropriations): None.